

Remarks/Arguments

The Office Action mailed on February 10, 2005 has been received, its contents carefully noted, and the applied citations thoroughly studied. All rejections tendered by the Examiner in the above-referenced Office Action are hereby respectfully traversed and reconsideration is respectfully requested.

The Examiner has rejected Claims 1-6, 13-16, 23 and 24 under 35 U.S.C. section 103(a) as being unpatentable over Romatowski (U.S. Patent Pub. No. US 2004/0079291) in view of Thaler et al. (European Patent EP 0972442). Further, the Examiner has rejected Claims 7 and 17 under 35 U.S.C. section 103(a) as being unpatentable over Romatowski (U.S. Patent Pub. No. US 2004/0079291) in view of Thaler et al. (European Patent EP 0972442) and Correia (U.S. Patent No. 3,828,733). The Examiner has also rejected Claims 8-12 and 18-22 under 35 U.S.C. section 103(a) as being unpatentable over Romatowski (U.S. Patent Pub. No. US 2004/0079291) in view of Thaler et al. (European Patent EP 0972442), Correia (U.S. Patent No. 3,828,733) and further in view of Gatta (U.S. Patent No. 5,394,835).

The combination of citations asserted by the Examiner does not render Applicant's invention unpatentable because: the citations do not disclose all of the elements of the invention; they do not teach the combination of the elements; and further because they are legally irrelevant to the invention as particularly claimed.

As stated in MPEP section 2143.03: "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." According to the Federal Circuit Court of Appeals, "[t]o reject claims in an application under section 103, an examiner must show an unrebutted *prima facie* case of obviousness. [citation omitted.] In the absence of a *prima facie* case of obviousness, an Applicant who complies with the other statutory

requirements is entitled to a patent." *In re Rouffet*, 149 F.3d 1350, 1355 (1993). The court further stated: "[w]hen a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references. [citation omitted.]" *Id.* The court explained that: "[t]o prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the matter claimed." *Id.* at 1357.

### 1. Romatowski in view of Thaler

The Examiner's 35 U.S.C. section 103(a) rejection of Applicant's Claims 1-6, 13-16, 23 and 24 is based on the conclusion that the Claims are unpatentable over Romatowski (U.S. Patent Pub. No. US 2004/0079291) in view of Thaler et al. (European Patent EP 0972442). *Inter alia*, Romatowski in view of Thaler does not disclose all of the elements of Applicant's invention.

Claims 1-6 require an increased waste capacity automated litter box system, wherein a conventional self-cleaning litter box is placed atop an elevated platform structure. An animal access ramp (30) is connected and extends downward from the conventional litter box's waste receptacle lid, and the elevated platform (20) is supported by support panels (51, 52) attached to, and extending from, the elevated platform. Significantly, the elevated platform is configured to hold securely the conventional automated litter box system (Specification, p. 10, Figs. 1-2.) The elevated platform (20) and its oppositely disposed base (10) both include a series of grooves (59) into which support panels (51, 52) can be friction fitted to achieve maximum stability of the

apparatus, and therefore the conventional litter box, as well as to facilitate easy assembly and disassembly. (Specification, p. 11, Figs. 1-3.) For additional stability, platform support panel (52) includes a series of oppositely situated grooves (60) to friction fit with the edge (61) of the animal access ramp support panel (56). Base extension (54) likewise includes grooves (64) to friction fit with the bottom edge of the animal access ramp (30). For yet additional stability, the top surface of the elevated platform (20) may include an upwardly extending frame (57) to help keep the conventional litter box in place. (Specification, p. 11, Figs. 1-3, 6.) Importantly, the aptly secured, elevated litter box may be retrofitted with an increased volume waste receptacle (68), which extends below the litter box's bottom surface, and therefore provides increased waste storage capacity. (Specification, pp. 13-14, Fig. 4.) Due to the friction fitting groove structures included on the elevated platform (20), support panels (51, 52), base (10), base extension (54) and ramp support panels (56), the apparatus may be easily disassembled and collapsed into planar configuration for convenient storage, shipping or other transportation. (Fig. 5).

Claims 13-16 require an apparatus for increasing the waste storage capacity of a conventional litter box system. The apparatus includes an elevated platform (20) configured to hold securely a conventional litter box system with a series of friction fitted supporting structures, as described above. The apparatus also includes an increased capacity replacement animal waste receptacle (67), which is configured to replace the conventional litter box waste receptacle, and positioned to extend from a point above the elevated platform (20) to a point below the elevated platform (20), which creates a larger volume for waste storage capacity. (Specification p. 12, Fig. 3). The increased capacity replacement waste receptacle (67) is retrofitted a conventional waste receptacle by replacing the conventional waste receptacle (65) with the replacement receptacle (67), which is preferably a disposable container, such as a bag

(68). (Specification p. 12, Fig. 3.) The increased waste storage volume is defined and enclosed by the lid of the conventional litter box placed atop the elevated platform (20), the animal access ramp (30), the base extension (54) and the platform support panels (52). (Specification p. 12, Figs. 1, 4, 6.)

Claim 23 requires an apparatus for increasing the waste storage capacity of a conventional automated litter box system. The apparatus includes structural support panels configured with grooves, as discussed above, to friction fit structural components of the apparatus in place resulting in a stable elevated platform structure, with a securely attached animal access ramp (30). The stabilized apparatus may be fitted with an increased capacity waste storage container to, *inter alia*, reduce the frequency with which pet owners are required to empty waste storage containers.

Claim 24 requires a method for increasing the waste storage capacity of a conventional automated litter box system, which employs the previously described stabilized elevated platform apparatus. The disclosed method includes securing a conventional automated litter box atop the elevated platform (20), as previously described, and replacing the conventional waste receptacle (65) with the replacement waste receptacle (67) of the apparatus. (Fig. 3.)

Applicant's invention requires that a conventional automated litter box be securely placed atop a stabilized elevated platform, which is accessible by a securely attached ramp to provide safe animal ingress and egress to the litter box. Importantly, the invention is provided with a series of support and base panels equipped with strategically placed grooves to friction fit the apparatus together and thereby stabilize the elevated platform. Litter box elevation is essential to providing increased waste storage capacity, since a replacement waste receptacle may be attached to, and extend below, the elevated litter box thereby providing increased capacity.

Additionally, the invention is a knock-down structure, which can easily be collapsed for storage, transport, and the like.

Romatowski discloses an apparatus and method for channeling waste from a conventional self-cleaning litter box receptacle into a garbage bag or container, but does not disclose or claim a collapsible under-structure supporting a stabilized elevated platform, or an elevated platform designed to hold securely a conventional litter box. Instead, Romatowski discloses a free-standing table designed with an intake opening extending below the tabletop surface, to which a garbage bag may be attached to receive litter box waste. (Specification 0006, 0021, 0023, Figs. 1, 3.) A conventional litter box is placed atop the tabletop or upper surface, and positioned so that waste flows into the intake opening. The tabletop is supported by four legs, as opposed to friction fitted support panels, and does not include an extended base support panel at all. Moreover, the tabletop is not designed with a structure to secure the conventional litter box, and thereby may create safety hazards for animals engaging the apparatus. In one embodiment of the invention, “[t]he litter box is placed atop a small table and positioned slightly off the edge of said table so that said outflow opening is clear of the surface of said tabletop, and, so that a garbage bag container or bag may be positioned or attached across said opening.” (Specification 0032) (emphasis added.)

Thaler is legally insignificant with respect to Applicant's invention, because the invention claims an improved litter box system, apparatus and method for achieving increased waste storage capacity for conventional automated litter boxes – the invention does not claim the conventional litter box itself, such as that claimed in Thaler. Applicant's specification expressly acknowledges that “automated litter box systems to which the present invention pertains are well known to those skilled in the art”, and that “[t]he present invention provides an improvement

over such automated litter box systems by altering the waste receptacle so that the bottom of the waste receptacle is located lower than the bottom surface of the litter box .... [b]y raising the automated litter box system above the floor .... [and] providing an elevated platform upon which the automated litter box system is positioned. (Specification pp. 13-14.) Notably, the disclosed drawings depict the conventional litter box system in phantom, again, expressly acknowledging that the conventional automated litter box system itself is not contemplated by the present invention. (Figs. 1, 3, 4, 6.)

In addition, Thaler does not disclose all of the elements of Applicant's invention. Conversely, Thaler discloses and claims a conventional, self-cleaning automated animal litter box and method for cleaning waste from a cat litter box, employing an automated comb to remove litter waste. Thaler focuses on detailed operational mechanics associated with litter box automation, and teaches, *inter alia*, the use of sensors and manual or automated operational mode selector switches to facilitate the box's self-cleaning function. As with other conventional automated litter boxes, Thaler discloses and claims a removable litter tray attached to the litter box – and terminating with the litter box bottom level, which is limited in capacity by this conventional design. Thaler does not teach or disclose a system, method or apparatus for increasing waste storage capacity by securely elevating the litter box and extending the waste storage receptacle below the bottom surface of the litter box to increase storage volume and capacity. Thaler does not even address the problem of increasing waste storage capacity to reduce the frequency with which pet owners are required to dump or replace waste receptacles.

Thus, because neither Romatowski nor Thaler disclose an elevated platform structure designed with a raised frame to secure a conventional litter box, and supported by collapsible support panels friction fitted together via a series of grooves, Romatowski cannot be combined

with Thaler to produce Applicant's invention. Moreover, Thaler is legally irrelevant, as it discloses a conventional automated litter box, which is not the object of Applicant's invention. Therefore, claims 1-6, 13-16, 23 and 24 are patentable over Romatowski in view of Thaler. The rejection under section 103(a) is improper.

## **2. Romatowski in view of Thaler and Correia**

The Examiner rejected Claims 7 and 17 under 35 U.S.C. section 103(a) as being unpatentable over Romatowski (U.S. Patent Pub. No. US 2004/0079291) in view of Thaler et al. (European Patent EP 0972442) as applied to claims 1-6 and 13-16, and further in view of Correia (U.S. Patent No. 3,828,733.) The combination of citations asserted by the Examiner does not render Applicant's invention unpatentable because; the citations do not disclose all of the elements of the invention; they do not teach the combination of the elements; and further because the Thaler reference is irrelevant to the invention as claimed and disclosed.

Claims 7 and 17 require an automated litter box system, as previously described, including the base (10) and platform support panels (51, 52) attached respectively to the base (10) and bottom surface of the elevated platform (20), forming a storage area (73) for articles underneath the elevated litter box.

Romatowski as modified by the Examiner and in view of Correia does not disclose all of the elements of Applicant's invention. As stated above, Romatowski in view of Thaler does not disclose an elevated litter box support structure framed to hold the litter box securely in place, and reinforced with friction fitted support panels comprising a series of grooves to facilitate reinforcement and easy disassembly. Correia does not disclose an elevated, reinforced, framed platform and base structure for supporting a conventional litter box to achieve increased waste storage capacity. Instead, Correia discloses a portable milking stall for cows. The floor of the

milking stall is supported by a base comprised of a truss-like framework employing horizontal, vertical and diagonal construction beams welded together to support the floor upon which cows stand during milking. The stall also provides for an entry ramp allowing cows access to the stalls.

Notably absent from the Correia citation are a base, support panels and an elevated platform situated to facilitate increased waste storage capacity between the base and bottom surface of the elevated platform. Moreover, Correia neither discloses nor claims a base, support panels and elevated platform structure operating in unison to create a defined storage area for articles below the elevated platform. Importantly, the support beams disclosed in Correia are welded together or similarly attached to support literally tons of weight as cows are being milked. Conversely, Applicants' invention is secured by a series of friction fitted grooves, which are designed to stabilize the structure – as well as provide for easy disassembly when the structure is not in use.

Correia discloses a stall structurally designed to support the weight of cows over a sustained period of time. The required structural integrity for the Correia invention does not lend itself to a collapsible under structure consistent with easy and fast disassembly – as disclosed by Applicant's invention. Rather, and more practically, a primary object of the Correia invention is mobility – to provide a portable milking stall to be used in a variety of locations – not a collapsible stall for disassembly after use or during transportation. Correia is thus legally irrelevant and shares only conventional standard similarity and one aspect of Applicant's claimed combination of elements.

Thus, because neither Romatowski nor Thaler nor Correia disclose an elevated platform secured by an extended collapsible base friction fitted with support panels and forming a defined

article and waste storage area underneath the elevated platform, Romatowski cannot be combined with Thaler and Correia to produce Applicant's invention. Therefore, claims 7 and 17 are patentable over Romatowski in view of Thaler and Correia. The rejection under Section 103(a) is improper.

3. Romatowski in View of Thaler, Correia and Gatta

The Examiner rejected claims 8-12 and 18-22 under 35 U.S.C. 103(a) as being unpatentable over Romatowski (U.S. Patent Pub. No. US 2004/0079291) in view of Thaler (European Patent EP 0972442) and Correia (U.S. Patent No. 3,828,733) as applied to claims 1-7 and 13-17, and further in view of Gatta (U.S. Patent No. 5,394,835).

Claims 8 and 18 require an automated litter box system and apparatus, as previously described, including an extension (54) of the base (10) extending underneath the ramp (30) with one end of the extension (54) connected to the lower end of the ramp (30) and a pair of ramp support panels (56) extending downward from the edge of either side of the ramp (30) to the extension (54) of the base (10). The ramp (30), ramp support panels (56), waste receptacle lid (75) and extension (54) of the base (10) define a waste connection volume (76) with a waste receptacle having a height extended vertically from the bottom of the lid (75) to the base (10) lid (75) and extension (54) of base (10).

Claims 9 and 19 require the automated litter box system and apparatus further comprising a disposable waste connecting container located in the waste connection volume (76) and connected at one end to an aperture through which waste and clumped animal water passes.

Claims 10 and 20 require an automated litter box system and apparatus wherein the base (10) and platform (20) are horizontally disposed and the platform support panels (51) and ramp support panels (56) are vertically disposed.

Claims 11 and 21 require an automated litter box system and apparatus wherein the disposable container is a bag with an opening at one end connected by a collar (69) 50 an aperture through which waste and clumped animal water passes.

Claims 12 and 22 require an automated litter box system and apparatus wherein the bag is attached to the collar (69) by a plurality of cups.

Romatowski as modified by the Examiner and in view of Gatta does not disclose all of the elements of Applicant's invention. Romatowski in view of Thaler and Correia does not disclose a collapsible elevated structurally secured platform and horizontally disposed reinforced base with friction fitted support panels to achieve stability and maintain the invention's structural integrity when in use. The citations, when combined, likewise do not disclose a platform, reinforced extended base, ramp and friction fitted support panels attached in cooperation to create a defined article storage area, as well as an increased waste storage area with a waste storage bag extended from the bottom surface of the elevated platform to the base. Gatta teaches "[A] set of stairs . . . secured to housing side walls by a clasp" for animal entry, and mentions without detail that a ramp may be used in place of the stairs. Gatta does not provide for a reinforced, stabilized under structure securing a ramp in place and disposed in cooperation with the ramp to create an increased waste storage capacity area housed, in part, by the ramp and friction fitted support panels.

Thus, because neither Romatowski nor Thaler, Correia, nor Gatta disclose an elevated platform supported by a raised, friction fitted, collapsible frame, including a stabilized and friction fitted ramp and support panels, disposed to create an increased article and waste storage area between the elevated platform's bottom surface and the friction fitted base, Romatowski cannot be combined with Thaler, Correia and Gatta to produce Applicant's invention. Therefore,

claims 8 – 12 and 18 -22, are patentable over Römatowski in view of Thaler, Correia and Gatta. The rejection under Section 103(a) is improper.

4. Conclusion

In view of the foregoing, it is respectfully requested that the Examiner pass this case to issue. If the Examiner believes further issues remain outstanding or new ones have been generated, Applicants have formally requested an interview with the Examiner, prior to the Examiner's preparation of the response to this Amendment, to address and resolve those issues.

Respectfully submitted,

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By: Bernhard Kretz  
Bernhard Kretz (Reg. No.27,037)  
Attorney for Applicants  
Weintraub Genshlea Chediak Sproul  
A Law Corporation  
400 Capitol Mall, 11<sup>th</sup> floor  
Sacramento, CA 95814  
(916) 558-6100